

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. CR 08-2410 MV

VICTOR ELIZALDE,

Defendant.

ORDER DENYING MOTION FOR NEW TRIAL DATE

THIS MATTER comes before the Court pursuant to the government's Motion for New Trial Date or, in the Alternative, Motion for Findings Under Speedy Trial Act [Doc. No. 70].

The Court has considered the motion and the provisions of the Speedy Trial Act, 18 U.S.C. § 3161 *et seq.* (2009), and being otherwise fully advised of the premises therein, finds the motion erroneously calculates the applicable dates subject to the Speedy Trial Act and should be

DENIED for the following reasons.

1. The speedy trial clock began to run in this case on October 15, 2008, the date the Indictment was filed against Defendant. 18 U.S.C. § 3161(c)(1).

2. Pursuant to 18 U.S.C. § 3161(h), the following periods of time are excluded in computing the time within which the trial must commence in this case:

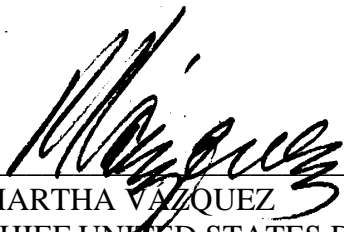
- a. October 23, 2008 - October 30, 2008, the period in which Defendant's Motion to Modify Conditions of Release [Doc. 28] was pending. *See* 18 U.S.C. § 3161(h)(1)(D).
- b. November 20, 2008 - December 3, 2008, the period in which Defendant's Motion to Continue Trial Date [Doc. 37] was pending. *See* 18 U.S.C. § 3161(h)(1)(D).

- c. February 11, 2009 - March 4, 2009, the period in which Defendant's Unopposed Motion to Continue Motions Deadline [Doc. 44] was pending. *See* 18 U.S.C. § 3161(h)(1)(D).
- d. February 17, 2009 - February 24, 2009, the period in which Defendant's Motion to Appoint Counsel [Doc. 46] was pending. *See* 18 U.S.C. § 3161(h)(1)(D).
- e. February 27, 2009 - March 4, 2009, the period in which Defendant's Motion for Continuance [Doc. 54], including Defendant's amended Motion for Continuance [Doc. 55] filed March 2, 2009, was pending. *See* 18 U.S.C. § 3161(h)(1)(D).
- f. April 17, 2009 - present, the period in which the United States' Motion in Limine Regarding Hearsay Statements Made by Defendant to United States Border Patrol Officers [Doc. 63] remains pending. This motion will continue to toll the speedy trial clock until a hearing on the motion or other prompt disposition of the motion occurs. *See* 18 U.S.C. § 3161(h)(1)(D).
- g. May 7, 2009 - May 29, 2009, the period in which the present Motion for New Trial Date or, in the Alternative, Motion for Findings Under Speedy Trial Act [Doc. 70] was pending.

3. Based upon the foregoing excluded periods of time, the trial scheduled to commence on June 23, 2009, satisfies the provisions of the Speedy Trial Act set forth in *See* 18 U.S.C. § 3161(c)(1).

IT IS THEREFORE ORDERED that the government's Motion for New Trial Date or, in the Alternative, Motion for Findings Under Speedy Trial Act [Doc. 70] is DENIED.

Dated: May 29, 2009.



MARTHA VAZQUEZ
CHIEF UNITED STATES DISTRICT JUDGE